IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 4 OF 2006

1. Shri Chandrakant Ankush
   Mandrekar, of major age,
   resident of H.No.170,
   Mulgao Manaswada,
   Bicholim Taluka, Goa.

2. Shri Dattaram Ankush
   Mandrekar of major age,
   r/o H.No.163, Mulgao
   Manaswada, Bicholim,
   Taluka, Goa.

3. Shri Kashinath Ankush
   Mandrekar, of major age,
   r/o H.No.164, Mulgao,
   Manaswada, Bicholim,
   Goa.

4. Shri Narayan Ankush
   Mandrekar, of major age,
   r/o H.No.164, Mulgao,
   Manaswada, Bicholim
   Taluka, Goa.

5. Shri Eknath Ankush
   Mandrekar, of major age,
   r/o H. No. 164, Mulgao,
   Manaswada, Bicholim
   Taluka, Goa. ... Appellants

versus

1. Shri Surya Sagaun Mandrekar,
   (since deceased) through his
   L.Rs.

1(a) Smt. Satyawati Surya
Mandrekar, widow of
defendant No.1.

1(b) Smt. Reshma Nanda
Mandrekar

1(c) Smt. Susma Suhas Mandrekar

1(d) Smt. Navanita Navnath
Mandrekar

All r/o Manaswada,
Mulgao, Bicholim, Goa.

2. Shri Nanda Surya Mandrekar
of major age, r/o H.No. not
known, Manaswada, Mulgao,
Bicholim, Goa.

3. Shri Suhas Suraya Mandrekar,
of major age, r/o H.No. not
known, Manaswada, Mulgao,
Bicholim, Goa.

4. Shri Navnath Surya Mandrekar,
of major age, r/o H.No. not
known, Manaswada, Mulgao,
Bicholim, Goa. ... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar, Advocate for the Appellants.

CORAM: N. A. BRITTO, J.

DATE : 5TH JUNE, 2006.

ORAL ORDER

Heard Mr. J. E. Coelho Pereira, the learned Senior Counsel on behalf of the appellants/plaintiffs.

2. Properties surveyed under nos.110/1 and 110/2 belong to a common owner of which the plaintiffs were the tenants namely of survey no.110/1 and the defendants of survey no.110/2. The defendants have their house in survey no.110/2. The plaintiffs have converted an existing tea-stall into their residence situated in survey no.110/1. The plaintiffs have subsequently in the year 1992 purchased the said property surveyed under no.110/1 under the provisions of the Tenancy Act, 1964. The plaintiffs and the defendants are closely related. The plaintiffs filed a suit against the defendants with the allegation that in November, 1994 the defendants had raised a tulas structure on the back side of their house and had trespassed into the property of the plaintiffs. Another allegation of the plaintiffs was that the defendants all of a sudden about a year prior to the filing of the suit had started going to their residential house through the said property of the plaintiffs

(survey no.110/1) in order to go to Mulgao-Sirigao road existing on the western side of the property of the plaintiffs. The plaintiffs, therefore, sought mandatory injunction against the defendants for the removal of the said tulas structure and permanent injunction to restrain the defendants from interfering or passing through the said property of the plaintiffs. The case of the defendants was that the defendants had a right of passage over the property of the plaintiffs and moreover the defendants had the platform of the said tulas structure in their property since time immemorial. The defendants had also pleaded that there was no boundary wall demarcating their respective properties. As far as the tulas structure is concerned, the learned trial Court came to the conclusion that the plaintiffs had failed to prove that it was constructed in the manner alleged by the plaintiffs in November, 1994. As far as this aspect of the case is concerned, the learned first appellate Court has preferred not to rely on the expert examined by the plaintiffs but on the contrary has relied upon the evidence of the expert examined by the defendants namely DW2/Kotkar who was a Civil Engineer registered with the P.W.D. On the basis of the evidence produced by the defendants and particularly that of

DW2/Kotkar, the learned first appellate Court has come to the conclusion that the tulas structure does not fall into the property of the plaintiffs surveyed under no.110/1 but the same is situated at a distance of about 0.4 meters from the western boundary of the defendants property. This is a conclusion of fact arrived at by the first appellate Court based on evidence. As far as the plea of injunction sought by the plaintiffs both the Courts below have come to the conclusion that the defendants had a right of way to pass through the property of the plaintiffs surveyed under no.110/1 to come to the Mulgao-Sirigao road situated on the western side of the property of the plaintiffs. In coming to the said conclusion, both the Courts have taken into consideration an Order passed by the Deputy Collector as well as the affidavit given by the owner of the said properties. Here again, both the Courts below have come to the conclusion that the defendants had a right of way through the property of the plaintiffs to go to the said road and, therefore, no injunction could be granted in favour of the plaintiffs. I have heard Mr. Coelho Pereira at length. He has pointed out the formulated substantial questions of law at para 11(a) to (e) of the Memo of Appeal. In my view, none of the said questions arise as

substantial questions of law to be decided by this Court in the light of the concurrent findings arrived at by both the Courts below, referred to herein above. In other words, there are no substantial questions of law involved in this appeal and consequently the same is hereby dismissed in limine.

N. A. BRITTO, J.

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